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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOUGLAS LEE THAYER,

Defendant.

Case No.: 2:21-cr-00053-GMN-VCF

**GOVERNMENT'S UNOPPOSED
MOTION TO CORRECT COUNT 1
OF THE INDICTMENT**

(Expedited Treatment Requested)

The parties met and conferred on March 31, 2022 and the defense does not oppose this motion.

I. Factual Background

On February 10, 2021, a Federal Grand Jury returned an Indictment charging Defendant Douglas Lee Thayer with fraud related to his company United States Adult Adoption Services. Count 1 of that Indictment charges the Defendant with Wire Fraud, in violation of 18 U.S.C. § 1343. More specifically, Count 1 alleges that the Defendant engaged in the following transaction:

1 6. On or about February 10, 2016, within the State and Federal District of
2 Nevada and elsewhere,

3 **DOUGLAS LEE THAYER,**

4 defendant herein, and others known and unknown to the grand jury, aiding and abetting
5 one another, for the purpose of executing the above scheme, and attempting to do so,
6 caused to be transmitted by means of wire communication in interstate commerce the
7 signals and sounds described as a wire transfer of \$13,000 from a Bank of America account
8 in California to a Wells Fargo account in Nevada, associated with the deposit of a check
9 from victim B.S., all in violation of Title 18, United States Code, Section 1343.

10 However, the Government recently discovered that Count 1 mistakenly identifies the
11 relevant financial transaction as being between Bank of America and Wells Fargo, instead
12 of between Bank of America and US Bank. That is, the indictment should read, “. . . a wire
13 transfer of \$13,000 from a Bank of America account in California to a ~~Wells Fargo~~ US Bank
14 account in Nevada” For the reasons below, the Government now asks the Court to
15 correct this error in the Indictment.

16 **II. Argument**

17 “The essential purpose of an indictment is to give the defendant ‘notice of the charge
18 so that he can defend or plead his case adequately.’” *United States v. Neill*, 166 F.3d 943, 947
19 (9th Cir. 1999) (quoting *United States v. James*, 980 F.2d 1314, 1316 (9th Cir. 1992)).

20 “Generally, failure of an indictment to detail each element of the charged offense constitutes
21 a fatal defect.” *James*, 980 F.2d at 1316. “However, a minor or technical deficiency in the
22 indictment will not cause reversal of a conviction absent prejudice to the defendant.” *Neill*,
23 166 F.3d at 947. “[C]ourts generally have not applied the strict language in *Bain* [that any
24 amendment of an indictment must be resubmitted to the grand jury] to cases involving only

1 minor clerical errors or *misnomers*, where the substance of the charge is left totally unaffected
2 and the prerogative of the grand jury is not usurped.” *United States v. Kegler*, 724 F.2d 190,
3 193-94 (D.C. Cir. 1983) (emphasis added); *see also Neill*, 166 F.3d at 947 (“Amendment of
4 the indictment to fix typographical errors is appropriate as long as the error did not mislead
5 the defendant.”).

6 In *Neill*, for example, the indictment charged the defendant with two counts of bank
7 robbery: one robbery at a Wells Fargo Bank and a second robbery at the Bank of Salem. 166
8 F.3d at 947-48. Count two, which covered the Bank of Salem robbery allegations,
9 mistakenly alleged that the money was in the “care, custody, control and management of
10 Wells Fargo Bank” instead of the Bank of Salem. *Id.* at 948. The error went unrecognized
11 by the Government, the defendant, and the district court until after the case was submitted
12 to the jury. *Id.* After the jury inquired whether Wells Fargo Bank owned the Bank of Salem,
13 the Government moved to amend the indictment, and the district court granted that motion
14 over the defendant’s objection. *Id.* at 947-48. The defendant appealed, but the Ninth Circuit
15 concluded that “[a]mending the indictment was not error in this case” “because [the
16 defendant] was clearly not prejudiced by the” mistake in the indictment. *Id.* at 948; *see also*
17 *United States v. Burnett*, 582 F.2d 436, 438 (8th Cir. 1976) (“[A] finding of prejudice to the
18 defendant must be present before an amendment [of an indictment] will be held
19 impermissible.”); *United States v. Gardley*, No. 2:10-cr-00236-GMN-PAL, 2012 WL 5451021
20 (D. Nev. Sept. 14, 2012) (Leen, J.) (relying on *Neill* to amend indictment to correct errors in
21 the purchase price for property transactions, the identity of a purchaser, and dates of bank
22 fraud scheme).

23 Count 1 of the Indictment in this case presents virtually the same mistake as count
24 two in *Neill*: both misidentify the name of the relevant bank. Like the defendant in *Neill*, the

Defendant here cannot claim any prejudice from the mistake. The rest of Count 1 is sufficiently detailed to put the Defendant on notice of the specific transaction he is charged with making: the date of the check, the amount of the payment, the type of check and the originating bank (*i.e.* a cashier's check issued by the Bank of America) are all correct. *See United States v. Williams*, 2012 WL 5881845, at *2 (E.D. Pa. Nov. 21, 2012) ("The focal points of the Counts were 'sufficiently clear to enable [the defendant] to prepare [his] defense.'" (citing *United States v. Coleman*, 656 F.2d 509 (9th Cir. 1981))).

Williams is particularly instructive given the Indictment's numerous correct details identifying the charged transaction. There, two weeks before trial, the Government moved to correct five mistakes in the indictment, including

- (1) changing the victim's initials in one count from R.K. to P.M. while keeping the transaction dates, credit card issuer, and account number unchanged;
- (2) changing the name of the credit card issuer in another count from Citibank to Discover while keeping the transaction date, account number, and the initials of the victimized accountholder unchanged; and
- (3) correcting one digit in the account number in a third count while keeping the transaction date, credit card issuer, and the initials of the victimized accountholder the same.

2012 WL 5881845, at *1. Over the defendant's objection, the district court permitted the amendments because "the corrections cannot be characterized as creating a prejudice against [the defendant]." *Id.* ("[N]owhere does [the defendant] suggest how he has been hoodwinked or misled in the preparation of his defense by the original text of the indictment as compared to the proposal or how he conceivably could be without double jeopardy protection in this circumstance.").

Furthermore, the discovery provided to the Defendant in this case identifies the correct bank at which the Defendant deposited the cashier's check (US Bank) and includes, an image of the actual deposited check that identifies the receiving bank as US Bank

(Exhibit 1 (annotation added))¹, along with a Bank Signature Card for the associated US Bank account at issue identifying Douglas Thayer as the account holder for the account in the name of “US Adult Adoption Services” (Exhibit 2).²

Count 1 correctly charges the Defendant with causing a wire transfer of \$13,000 associated with the deposit of a cashier’s check by victim B.S., which originated from Bank of America. Correcting that Count to reflect that the check was deposited at US Bank, not Wells Fargo, is a minor, technical correction that causes the Defendant no prejudice.

III. Conclusion

Because the rest of Count 1 and the discovery put the Defendant on sufficient notice of the charge against him, the Court should correct Count 1 of the Indictment as follows:

“ . . . a wire transfer of \$13,000 from a Bank of America account in California to a ~~Wells Fargo~~ US Bank account in Nevada”

Respectfully submitted this 31st day of March, 2022.

CHRISTOPHER CHIOU
Acting United States Attorney

s/ Simon F. Kung
SIMON F. KUNG
JESSICA OLIVA
Assistant United States Attorneys

For good cause appearing, the Court
GRANTS the Government's Unopposed
Motion to Correct Count 1 of the Indictment.

Dated this 31 day of March, 2022.


Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT

¹ Produced at Bates number USA06913.

² Produced at Bates number USA06825.

Exhibit 1

Bank of America

Cashier's Check

No. 0145207143

Notice to Purchaser - In the event that this check is lost, misplaced or stolen, a sworn statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days.

Void After 90 Days

91-170/1221

Date 02/10/16 02:35:00 PM

NAZ

BANK OF AMERICA WEST

0004 0007748 0148

Pay



BANK OF AMERICA ONE THREE ZERO ZERO ZERO DOLLARS

***\$13,000.00

To The
Order Of US ADULT ADOPTION SERVICES INC

Remitter (Purchased By): BAOQIANG SONG

Bank of America, N.A.
PHOENIX, AZ

[Signature]
AUTHORIZED SIGNATURE

⑈0145207143⑈ ⑆122101706⑆ 457002931720⑈

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

027687619

www.bankofamerica.com

www.bankofamerica.com

ENDORSE CHECK HERE

DO NOT SIGN OR STAMP BELOW THIS LINE

DEPOSITORY BANK ENDORSEMENT

0145207143 11-2010

Chandra

20160212 009255410266 13000.00

16082582672666 12345678

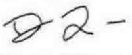
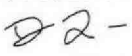
Chandra Bunbury

BC-MN-H21P

Exhibit 2



SIGNATURE CARD - BUSINESS

ACCOUNT TITLE: US ADULT ADPOTION SERVICES INC	
ADDRESS: PO BOX 97451	TIN: 47-4631587 PHONE: (702) 503-1145
CITY: LAS VEGAS	STATE: NV ZIP: 89193-7451
TYPE OF BUSINESS: Corporation - S Corp	
TYPE OF ACCOUNT: Silver Business Checking	
OWNERSHIP: Corporation	
Account Holder Name(s) DOUGLAS L THAYER, JOO	Account Number 153756730849
DATE OPENED: 07/28/2015 TIME OPENED: 04:56 PM OPENED BY: Jacqueline R Jamerson OFFICE: 03771	
<p>Certification: Under penalties of perjury, I certify that:</p> <p>(1) (47-4631587) is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me), and</p> <p>(2) I am a U.S. Citizen or other U.S. person, and</p> <p>(3) I am not subject to backup withholding because (a) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of failure to report all interest or dividends, or (b) the IRS has notified me that I am no longer subject to backup withholding.</p> <p>(4) The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.</p> <p>Certification Instructions. You must cross out item 3 above if you have been notified by the IRS that you are currently subject to back up withholding because you have failed to report all interest and dividends on your tax return. For real estate transaction, item 3 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividend you are not required to sign the Certification, but you must provide your correct TIN.</p> <p>The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.</p>	
E-SIGNED 07/28/2015 by DOUGLAS L THAYER	
	
DOUGLAS L THAYER	Date:
<p>Terms And Conditions: The bank is hereby authorized to recognize the signature(s) subscribed below in the payment of funds or the transaction of any business for this account. All transactions shall be governed by applicable laws and the bank's terms (copy acknowledged as received herewith) that pertain to the type of account and style of ownership indicated on this card. Upon request of the bank, any consumer reporting agency is hereby instructed to furnish a consumer report relating to the undersigned to the bank. Refer to resolution file for authorization of signatures where authorization is required.</p> <p>By signing this signature card, you are also acknowledging your express consent to the terms and conditions in your applicable account agreement, including but not limited to our policies on funds availability and our cellular phone contact policy.</p>	
E-SIGNED 07/28/2015 by DOUGLAS L THAYER	
	
DOUGLAS L THAYER	Date:





RESOLUTION OF CORPORATION

Authority to open accounts, make deposits, and withdraw funds

Account Number: 153756730849

I, DOUGLAS L THAYER, HEREBY CERTIFY:

- I am the duly elected, qualified and acting Secretary / Authorized Officer of the corporation named *US ADULT ADPOTION SERVICES INC ("Corporation"), which is organized, validly existing, and in good standing under applicable laws.
- As of 07/28/2015 (date), this resolution is duly authorized, in full force and effect, and has not been amended or rescinded.
- The following individuals are designated as authorized agents of the Corporation. The authorities granted by this resolution have not been revoked, modified, annulled or amended in any manner whatsoever. Any authority granted shall remain in full force and effect until revoked in writing by the Corporation.

AGENTS AUTHORIZED TO ACT ON BEHALF OF CORPORATION

Additional individuals and their signatures may be noted on an attachment, if required.

NAME / TITLE

SIGNATURE SPECIMEN

DOUGLAS L THAYER,
OWNER

E-SIGNED 07/28/2015 by DOUGLAS L THAYER

DLT



RESOLUTION OF CORPORATION (CONTINUED)

Authority to open accounts, make deposits, and withdraw funds

IT IS RESOLVED THAT:

- U.S. Bank, N.A. ("Bank") is designated as a depository of the Corporation.
- The authorized agents of the Corporation shall have the authority to:
 - **DEPOSIT** the funds of the Corporation into the above-referenced account(s) subject to the present and future account terms and conditions.
 - **WITHDRAW** the funds of the Corporation through any and all types of transactions (including but not limited to: executing checks, drafts, bills of exchange, acceptances, wires, funds transfers and other instruments and orders for the payment of money). This authority includes any and all transactions drawn to the individual order of an authorized agent and/or deposited into the individual account of such authorized agent.
 - **PROVIDE** instructions with respect to the account(s) of the Corporation and enter into agreements relating to the account(s) of the Corporation on behalf of the Corporation upon such terms and conditions as he or she may deem appropriate.
 - **APPLY** for and receive loans, lines of credit, and letters of credit on behalf of the Corporation, including making pledges for property belonging to the Corporation as security to the Bank, and to execute and deliver any and all notes, agreements or other documents necessary for such borrowing or security on behalf of the Corporation.
- The Bank is authorized to honor the facsimile or mechanical signature of any and all authorized agents. A facsimile or mechanical signature is presumed valid regardless of by whom or what means the facsimile signature may have been affixed as long as the facsimile signature reasonably resembles the signature specimen of the authorized agent. Corporation indemnifies and holds the Bank harmless from any and all claims and liabilities arising from any transaction bearing a facsimile signature as authorized in this resolution.

IN WITNESS WHEREOF, this Resolution of the Corporation has been executed on 07/28/2015 (date).

E-SIGNED 07/28/2015 by DOUGLAS L THAYER

DLT

DOUGLAS L THAYER
(Secretary / Authorized Officer)

Date

